IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TENNESSEE
AT KNOXVILLE

Michael T. Hall, Sr., and Sherry Hall	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil Action No.
	)	
	)	Jury Trial Demanded
Ocwen Loan Servicing, LLC	)	
Defendant.	)	
	)	

COMPLAINT

INTRODUCTION

1. This is an action brought by the Plaintiffs, Michael T. Hall, Sr. and Sherry Hall, for actual and statutory damages, punitive damages, attorney's fee and costs for Defendant's negligent and willful violations of the Fair Debt Collection Practices Act, 15 U.S.C. §§1692 et seq. (hereafter "FDCPA") and The Fair Credit Reporting Act, 15 U.S.C. §§ 1681s et seq.

JURISDICTION

2. Subject matter jurisdiction in this Court is proper pursuant to 15 U.S.C. §1692k(d), 15 U.S.C. §1681p and 28 U.S.C. §1331, §1332 and §1367. (federal question jurisdiction).

3. Venue is proper in this District because the acts and transactions occurred here, Defendant transacts business here and Plaintiffs reside here.

PARTIES AND PERSONAL JURISDICTION

4. The Plaintiff incorporates the allegations set forth in Paragraphs 1 through 3 above as if set forth fully herein.

5. Plaintiffs, Michael T. Hall, Sr. and Sherry Hall, (hereafter referred to as "Plaintiffs") are residents of this State, District and Division who are authorized by law to bring this action.

6. Defendant Ocwen Loan Servicing, LLC (hereafter referred to as "Defendant") is a for-profit limited liability company organized in Delaware, with its principal office located at 1661 Worthington Road, Ste. 100, West Palm Beach, FL 33409-6493. The defendant maintains Corporation Service Company, 2908 Poston Ave, Nashville, TN 37203-1312 as its registered agent for service of process.

7. The Defendant is the servicer for the note being held by Deutsche Bank National Trust Company, As Trustee for the Registered Holders of Morgan Stanley ABS Capital I Trust 2007-HE7 Mortgage Pass-Through Certificates, Services 2007-HE7,

8. Defendant was in all respects and at all times relevant herein doing business in the state of Tennessee.

9. Defendant is a "debt collector" as defined by 15 U.S.C. §1692a(6) of the FDCPA as the Defendant became the servicer of this loan after the loan was in default. See *Wallace v. Washington Mut. Bank, F.A.*, 683 F3d 323 (6th Cir. 2012) and *Glazer v. Chase Home Fin, LLC* (704 F3d 453 (6th Cir. 2013).

10. Other defendants may be discovered in the course of litigation, and Plaintiff respectfully prays that the Court will permit the addition of later discovered parties upon motion.

FACTUAL ALLEGATIONS

11. The Plaintiffs incorporate the allegations set forth in Paragraphs 1 through 10 above as if set forth fully herein.

12. The Plaintiffs filed a chapter 13 reorganization bankruptcy in the Bankruptcy Court, Eastern District of Tennessee, Northern Division on October 15, 2010, bearing case number 3:10-bk-34995.

13. The confirmed chapter 13 plan provided that Saxon Mortgage Services, be paid a maintenance payment on the first mortgage loan and that any allowed pre-petition arrearage would be cured through the chapter 13 bankruptcy.

14. The confirmed chapter 13 plan also provided in paragraph 12(A)(5):

> **Confirmation of the plan shall impose an affirmative duty on the holders and/or the servicers of any claims secured by liens, mortgages and/or deeds of trust on the principal residence of the Debtors to do all of the following:** To notify the Trustee, the Debtors, and the attorney for the Debtors, in writing, of any change in the property taxes and/or the property insurance premiums that would either increase or reduce the escrow portion, if any, of the monthly mortgage payments and the effective date of any such adjustment or adjustments not less than 60 days in advance of such change or at such time as the change becomes known to the holder if the change is to be implemented in less than 60 days.

See confirmed plan order dated November 22, 2010 attached as Exhibit 1.

15. The confirmed chapter 13 plan also provided in paragraph 12(A)(6):

> **Confirmation of the plan shall impose an affirmative duty on the holders and/or the servicers of any claims secured by liens, mortgages and/or deeds of trust on the principal residence of the Debtors to do all of the following:** To file with the court and serve upon the Trustee, the Debtors, and the attorney for the Debtors, by February 15 of each year governed by this plan, an Annual Statement detailing the following amounts paid by the Debtors during the preceding calendar year: (i) all payments applied to the principal balance; (ii) all payments applied to interest; (iii) all payments applied to any escrow account; (iv) all payments applied to any pre-petition arrearage claim and the remaining balance; and (v) all fees and charges alleged to have accrued post-petition, along with an explanation thereof.

> Failure to file and serve the Annual Statement as set forth herein results in the mortgage being deemed fully current as of the calendar year for which the Annual Statement is due. The final Annual Statement shall be filed and served within 45 days after the Trustee files her Preliminary Trustee's Final Report and Certificate of Final Payment, a copy of which shall be served by the Trustee on the holder or servicer of any claim required to file an Annual Statement. The failure to file the final Annual Statement as set forth herein following completion of the Debtors' plan and entry of discharge results in the mortgage being deemed fully current as of the date of the discharge, except as to any post-petition default amount which may be collected by the holder pursuant to paragraph 7(b) below.

See confirmed plan order dated November 22, 2010 attached as Exhibit 1.

16. A proof of claim was filed by Saxon Mortgage Services on or about October 28, 2010 which included in the arrearage amount to be cured an escrow shortage. The proof claim also stated that beginning December 1, 2010, the monthly maintenance payment amount will be $708.33 due to escrow requirements and/or interest rate adjustments, if applicable. See proof of claim dated October 28, 2010 attached as Exhibit 2.

17. A Notice of Transfer from Saxton Mortgage Services, Inc. to Deutsche Bank National Trust Company, Ocwen Loan Servicing LLC was filed with the Bankruptcy Court on August 22, 2012. See notice of transfer attached as Exhibit 3.

18. The debtors received a discharge after completing their chapter 13 bankruptcy on December 14, 2015.

19. A notice of final cure on the mortgage with Defendant was filed on December 9, 2015 whereby the Chapter 13 Trustee asserted the debtors had paid the pre-petition mortgage arrearage and ongoing mortgage payments sufficient to bring the mortgage current and including the month of November 2015; plus $0 in post-petition supplemental claim. The notice further stated "…pursuant to Federal Bankruptcy Rule 3002.1(g)… you [Ocwen] are required to file a response to this Notice of Final Cure … [t]he statement shall itemize the required cure or post-

petition amount, if any, which the holder contends remain unpaid as of the date of the statement; and the statement, shall be filed as a supplement to the holder's proof of claim." See Notice of Final Cure attached as Exhibit 4.

20. The defendant filed a Response to Notice of Final Cure on December 30, 2015 stating, "Creditor agrees that the debtor(s) have paid in full the amount required to cure the prepetition default on the creditor's claim." and "Creditor states that the debtor(s) are current with all post-petition payments consistent with Section 1322(b)(5) of the Bankruptcy Code, including all fees, charges, expenses, escrow, and costs." See Response to Notice of Final Cure attached as Exhibit 5.

21. On January 29, 2016 the Bankruptcy Court ordered the mortgage loan with Ocwen Loan Servicing LLC, as servicer for Deutsche Bank National Trust Company, current through the month of November 2015. See Order attached as Exhibit 6.

22. Since the completion of their chapter 13 plan, the plaintiffs have made a monthly payment to the defendant, which included principal, interest and escrow based on statements sent to them by defendant. See attached a summary of payments made, the dates the payments were made and the amount of the payments as Exhibit 7.

23. Plaintiff's did not make a monthly payment in July and August 2016 based on assertions by defendant they were current through the September 2016 payment. See Statement dated June 17, 2016 attached as Exhibit 8, whereby the statement has a payment due date of September 1, 2016. See also the letter dated July 6, 2016 in response to the Plaintiffs inquiry regarding the due date of September 1, 2016 whereby the Defendant states, "We reviewed our record and determined that the loan is currently due for September 1, 2016 payment which is valid" See July 6, 2016 letter attached as Exhibit 9.

24. On or about June 17, 2016 the Plaintiffs received a mortgage statement from the Defendant which showed an escrow balance of negative -$7,594.02. See attached as Exhibit 8.

25. On or about September 29, 2016, the Plaintiffs received an escrow account disclosure statement which showed an escrow shortage of negative -$7,367.31 as of the date of bankruptcy closing. See Exhibit 10. The escrow account disclosure statement showed an expected balance deficiency of negative -$7,912.49 for the coming year. See Exhibit 10. The analysis indicated the Defendant would be collecting that negative escrow shortage over 60 months at $153.21 per month. Further, the disclosure statement indicated the Defendant would collect the current escrow of $3,607.00 for insurance and property taxes at $300.58 per month over the next 12 months. This Defendant disclosed the Plaintiff's monthly payment would increase from $659.24 per month to $973.62 per month of which $453.79 will be going into the escrow account. See Exhibit 10.

26. On November 9, 2016, the Plaintiffs, through a qualified written request letter, disputed to defendant the escrow shortage of $7,912.49 which was causing an increase in the mortgage payment from $659.42 to $973.62; specifically citing the response to the notice of final cure payment and the order of the Bankruptcy Court declaring the mortgage payments current. See Qualified Written Request letter attached as Exhibit 11

27. On December 19, 2016, the counsel for the plaintiffs, received a letter from Defendant in response to the qualified written request letter ("QWR"), stating in part:

A. "Our records indicates that, payments of $708.33 were remitted toward the post-petition plan payments which included an escrow amount of $139.41 and the payments were applied toward the post-petition plan accordingly."

B. "Please note that, when we acquired the serving rights from Saxon Mortgage Services, Inc. on May 17, 2011, there was a negative escrow balance of $2,259.88."

C. Our records indicate that, the change in the taxes an insurance premium amount and the disbursements were made accordingly. However, the escrow payment

> was not changed to collect the negative escrow balance. Therefore, the negative escrow balance of $-7,912.49 reflecting on the loan is valid".

See letter dated December 19, 2016 attached as Exhibit 12.

28. On January 19, 2017, Defendant sent counsel for the Plaintiffs a Payoff Quote in response to the qualified written request which included $7,912.49 for an escrow advance. See payoff quote dated 1/19/17 attached as Exhibit 13.

29. On January 25, 2017, the Defendant sent the Plaintiffs a notice of default. The January 25, 2017 letter states "this notice is sent to you only as a preliminary step to an "in rem" foreclosure on the mortgage against the above-referenced property." See letter dated January 25, 2017 attached as Exhibit 14.

30. On February 15, 2017, the Defendant sent the Plaintiff's a Delinquency Notice stating they were due for December 1, 2016 in the amount of $973.62 and that the loan was past due $3,236.46 which included the December 2016 through March 2017 payments at $973.62. See letter dated February 15, 2017 attached as Exhibit 15.

31. On March 20, 2017, the Defendant sent the Plaintiffs a Delinqency Notice stating they were due for February 1, 2017 in the amount of $973.62 and that the loan was past due $2,887.33 which included the February 2017 through April 2017 payments at $973.62. See letter dated March 10, 2017 attached as Exhibit 16

32. On or about March 13, 2017, the Defendant sent the Plaintiff's a letter stating they had not received their February or March mortgage payments and that "[i]f you have not already mailed these payment(s), this means your account is now in default, and if you do not make these payments or reach another resolution with us further collection activity may continue, including

possible foreclosure as permitted by your state law". See March 13, 2017 letter attached as Exhibit 17.

CAUSES OF ACTION

COUNT ONE: THE FAIR DEBT COLLECTION PRACTICES ACT: UNFAIR PRACTICES

33. The Plaintiff incorporates the allegations set forth in Paragraphs 1 through 32 above as if set forth fully herein.

34. Defendant alleges Plaintiff incurred an obligation to pay money arising out of a transaction in which money, property, insurance or services which are the subject of the transaction are primarily for personal family or household purposes, and is therefore a "debt" as that term is defined by 15 U.S.C. §1692a(5).

35. Specifically, Plaintiffs had a financial obligation to pay Deutsche Bank National Trust Company for a mortgage loan.

36. Plaintiff is of the information, knowledge and belief Defendant is the servicer or collection agency of Deutsche Bank National Trust Company.

37. The Defendant filed a response to notice of final cure payment in the Bankruptcy Court which specifically stated in Part 3 Post-petition Mortgage Payment that the plaintiffs "are current with all postpetition payments consistent with §1322(b)(5) of the Bankruptcy Code, including all fees, charges, expenses, escrow and costs." See Exhibit 5.

38. The order of the Bankruptcy Court dated January 29, 2016 specifically deemed this mortgage current through November 2015 based on Defendant's response of final cure payment. See Exhibit 6.

39. All of the correspondence, specifically Exhibits 8-10 and 12-17 are collection correspondence from Defendant and were a "communication" made in connection with collection of a debt and in an attempt to collect a debt as that term is defined by 15 U.S.C. §1692a(2).

40. The acts of Defendant constitute violations of the Fair Debt Collection Practices Act. Defendant's violations of the FDCPA include, but are not limited to, the collection of amounts neither expressly authorized by the agreement creating the debt nor permitted by law in a violation of 15 U.S.C. §1692f(1) as the Plaintiffs did not owe the escrow shortage as stated by the Defendant's response, under oath and under penalty of perjury, to the Notice of Final Cure Payment part 3 whereby Defendant specifically stated, "Creditor states that the debtor(s) are current with all postpetition payments consistent with §1322(b)(5) of the Bankruptcy Code, including all fees, charges, expenses, escrow, and costs." See Exhibit 5.

41. The acts of Defendant constitute a violation of the FDCPA as the Defendant is threatening the plaintiffs with foreclosure unlawfully in violation of 15 U.S.C. §1692f(6).

42. As a result of Defendant's actions, Plaintiff is entitled to an award of statutory damages, emotional distress damages and an award of costs and attorney fees.

COUNT TWO: THE FAIR DEBT COLLECTION PRACTICES ACT
THE USE OF FALSE, DECEPTIVE OR MISLEADING REPRESENTATIONS AS TO THE AMOUNT OF THE ALLEGED DEBT

43. The Plaintiff incorporates the allegations set forth in Paragraphs 1 through 42 above as if set forth fully herein.

44. The acts of Defendant constitute violations of the FDCPA. Violations by the Defendant of the FDCPA include, but are not limited to, the use of false, deceptive or misleading

representations in connection with the character, amount or legal status of the alleged debt, in violation of 15 U.S.C. §1692e(2)(A).

45. As more fully described in the first cause of action *supra*, Defendant is attempting to collect an escrow shortage and other charges when it is not entitled to do so.

46. The defendant is in violation of 15 U.S.C. §1692e(2) when it states the plaintiffs are in default on their mortgage loan debt.

47. The defendants are further in violation of 11 U.S.C §1692e(5) with it threatens to foreclose on the plaintiffs home as the defendant cannot legally foreclose on a mortgage loan that is current.

COUNT THREE: COUNT FOUR: FAIR CREDIT REPORTING ACT

48. The plaintiff incorporates the allegations set forth in Paragraphs 1 through 47 above as if set forth fully herein.

49. In March 2017, the plaintiffs disputed the information provided by defendant on their credit report.

50. The defendant continues to report to all three major credit bureaus for Mrs. Sherry Hall a) a zero balance on the mortgage loan being serviced by defendant, b) the loan was "discharged in chapter 13" and c) the loan is a 50 year when the loan is a 30 year loan. See relevant page of credit reports (redacted) as Exhibit 18.

51. The defendant reported to Equifax on Mrs. Hall's report that the balance on the mortgage increased from $57,534 in November 2015 to $73,686 in December 2015, then a balance of $69,130 in January 2016 and finally reported "No Data Available" beginning April

2016. See relevant page of both Mr. and Mrs. Hall's credit report with Equifax (redacted) as Exhibit 18.

52. Defendant negligently and willfully violated 15 U.S.C. § 1681s-2(b)(1)(A) by failing to conduct an investigation after receiving notice that the plaintiffs disputed the information Defendant had provided to all three major consumer reporting agencies.

53. Defendant negligently and willfully violated 15 U.S.C. § 1681s-2(b)(1)(B) by failing to review all relevant information provided by the consumer reporting agencies pursuant to § 1681i.

54. Defendant negligently and willfully violated 15 U.S.C. § 1681s-2(b) by failing to conduct an investigation as to the accuracy of the information reported by the Defendant to a consumer reporting agency.

55. Defendant negligently and willfully violated 15 U.S.C. § 1681s-2(b)(2) by failing to complete all investigations, reviews, and reports required under § 1681s-2(b)(1) within 30 days.

56. Defendant negligently and willfully violated 15 U.S.C. § 1681s-2(b)(1)(c) by reporting inaccurate, incomplete, false, and misleading results of the investigation, if any, to a consumer reporting agency.

57. Defendant negligently and willfully violated 15 U.S.C. § 1681s-2(b)(1)(D) by failing to notify all consumer reporting agencies that the reporting of the Plaintiff's account was inaccurate, incomplete, false, and misleading.

58. As a result of Defendant's acts and omissions, the Plaintiff has suffered actual and compensatory damages. The Plaintiffs have suffered denial of credit, damage to their credit reputation, mental anxiety, emotional suffering, worry, humiliation and mental distress. In

addition, the Plaintiff has incurred out of pocket expenses, litigation expenses and attorneys' fees which, but for the acts and omissions of Defendant alleged herein, would not have been necessary. Further, Defendant's acts and omissions were willful and demonstrate a reckless disregard for the Plaintiff's rights. Therefore, Defendant is liable to the Plaintiff for punitive damages.

TRIAL BY JURY

59. The Plaintiffs incorporate the allegations set forth in Paragraphs 1 through 58 above as if set forth fully herein.

60. Plaintiffs are entitled to and hereby respectfully demands a trial by jury. US Const. amend. 7. Fed.R.Civ.P. 38.

AMOUNT OF DAMAGES DEMANDED

WHEREFORE, PREMISES CONSIDERED, Plaintiffs demand a judgment against Defendant for the following:

A. Actual and/or statutory damages from Defendant for Plaintiff's actual damages suffered as a direct and proximate result of Defendant's violations of the FDCPA, pursuant to 15 U.S.C. §1692k(a)(1);

B. Judgment against Defendant for $1,000 in statutory damages for Defendant's violations of the FDCPA, pursuant to 15 U.S.C. §1692k (a)(2);

C. Require Defendant to show the plaintiffs are current on their mortgage loan in their internal records and to notify the credit bureaus that the loan is current and has been current since November 2015.

D. Require Defendant to accurately remove the escrow shortage, property inspection fees, late fees and any other fees or expense incurred as a result of inaccurately showing the escrow shortage in their internal records.

E. Require Defendant to accurately report the credit history and status of the mortgage loan to all three credit bureaus, Equifax, Experian and Transunion.

F. Assess actual damages incurred by the debtors, attorney fees necessary to prosecute this motion and additional punitive damages for Ocwens' willful refusal to correct their mortgage loan records.

G. Punitive damages in an amount to be determined by a jury; and

H. For such other and further relief as the Court may deem just and proper.

Respectfully submitted this 21st day of April, 2017.

Michael and Sherry Hall

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